

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities (collectively "Cingular") to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee and other penalties from consumers.

Investigation 02-06-003
(Filed June 6, 2002)

**JOINT RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE
REGARDING ORAL ARGUMENT**

Oral Argument

As previously noticed, the Commission has reset oral argument¹ in this proceeding to the following date and time:

**Monday, December 8, 2003
2:00 p.m.
Commission Court Room
State Office Building
505 Van Ness Avenue
San Francisco, CA 94102**

¹ This is a discretionary oral argument under Rule 76 of the Commission's Rules of Practice and Procedure. There is no statutory right to oral argument upon appeal of a presiding officer's decision.

Since oral argument has been set, the motions of Cingular Wireless (Cingular) for oral argument filed on July 28 and September 12, 2003 are moot and require no further action.²

Scope

The focus of this oral argument is the Presiding Officer's Decision (POD) issued on September 9, 2003. A party's arguments shall identify perceived errors of fact and law in the POD and explain why the party disagrees with the POD.

Agenda; Order of Procedure

An agenda for the oral argument is attached to this ruling. The agenda identifies six major issues and provides speaking opportunities for each of the three parties to this proceeding.³ Consistent with the order of procedure set out in applicable provisions of Rule 57, the agenda provides that Consumer Protection and Safety Division (CPSD) shall open and close on each issue, followed by Utility Consumers' Action Network (UCAN). CPSD and UCAN shall share the allocated time in an equitable manner and either may cede its time to the other. Parties may reserve unused time from one issue for another issue, if they wish to do so.

Parties may distribute handouts at the oral argument, subject to the conditions set out in the ruling paragraphs below. Time and space limitations prevent the convenient use of briefing boards, overhead projectors, or computer

² *Cingular Wireless' Motion for Oral Argument Before the Commission, En Banc*, filed July 28, 2003; *Renewed Motion of Cingular Wireless for Oral Argument Before the Commission, En Banc*, filed September 12, 2003.

³ Only official representatives of the parties to this investigation may appear as speakers at oral argument.

presentations (such as Power Point), and parties will not be permitted to use them.

IT IS RULED that:

1. Oral argument on the Presiding Officer's Decision, issued in this adjudicatory proceeding on September 9, 2003, shall be held before the Commission as set forth in this ruling.
2. Each party may prepare and use a handout at the oral argument, subject to the following conditions:
 - a. A handout may consist of no more than ten pages (printed on one side only).
 - b. Any factual assertions in a handout must include citations to evidence received as part of the record of this proceeding.
 - c. All pages of a handout and any points set out therein should be numbered for ease of reference and clarity at oral argument, and to facilitate understanding of the resulting transcript.
 - d. No handout will be received as an exhibit nor have any separate evidentiary value in this proceeding.
 - e. A party must provide sufficient copies of its handout for distribution to the five Commissioners, the assigned ALJ, and the court reporters, as well as at least 50 additional copies, which will be made available to members of the audience on a first come/first served basis.
3. Parties may not use briefing boards, overhead projectors or computer presentations (such as Power Point) at the oral argument.

4. The following motions are moot: *Cingular Wireless' Motion for Oral Argument Before the Commission, En Banc*, filed July 28, 2003; *Renewed Motion of Cingular Wireless for Oral Argument Before the Commission, En Banc*, filed September 12, 2003.

Dated: November 5, 2003, at San Francisco, California.

/s/ CARL WOOD
Carl Wood
Assigned Commissioner

/s/ JEAN VIETH
Jean Vieth
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Joint Ruling of Assigned Commissioner and Administrative Law Judge Regarding Oral Argument on all parties of record in this proceeding or their attorneys of record.

Dated November 5, 2003, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

I.02-06-003 XJV/hl2

(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

**ATTACHMENT A:
AGENDA**

Time: 2:00 Call to Order and Opening Comments by Commissioners

Issue 1: Federal Preemption

CSPD & UCAN (3 minutes)

Cingular (6 minutes)

CSPD & UCAN (3 minutes)

Questions from the Commissioners*

Issue 2: Liability under § 451—Just and Reasonable Service

CSPD & UCAN (4 minutes)

Cingular (8 minutes)

CSPD & UCAN (4 minutes)

Questions from the Commissioners*

Issue 3: Liability under § 451/§ 2896—Required Disclosures

CSPD & UCAN (4 minutes)

Cingular (8 minutes)

CSPD & UCAN (4 minutes)

Questions from the Commissioners*

Issue 4: Liability under § 451/D.95-04-028—Bundling Decision Compliance

CSPD & UCAN (3 minutes)

Cingular (6 minutes)

CSPD UCAN (3 minutes)

Questions from the Commissioners*

* Commissioners may interpose questions at any time during the oral argument.

Afternoon Break (10 minutes)

Issue 5: Liability under consumer protection statutes in other California Codes

- **Unfair Competition Law, Bus. & Prof. Code §17200 et seq. & §17500 et seq.**
- **Song-Beverly Consumer Warranty Act, Civ. Code §1794 et seq.**
- **Consumer Legal Remedies Act, Civ. Code §1770 et seq.**
- **Commercial Code §§2314-2316**

CSPD & UCAN (3 minutes)

Cingular (6 minutes)

CSPD & UCAN (3 minutes)

Questions from the Commissioners*

Issue 6: Remedies (Penalties & Reparations); Agency

CSPD & UCAN (4 minutes)

Cingular (8 minutes)

CSPD & UCAN (4 minutes)

Questions from the Commissioners (4 minutes)*

Concluding Arguments

Cingular (6 minutes)

CSPD & UCAN (6 minutes)

Time: 4:00 Adjourn

* Commissioners may interpose questions at any time during the oral argument.

(END OF ATTACHMENT A)